



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG-2021-0211]

RIN 1625-AA08

Special Local Regulations, Choptank River, Cambridge, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing special local regulations for certain waters of the Choptank River. This action is necessary to provide for the safety of life on navigable waters located at Cambridge, MD, during a high-speed power boat racing event on July 24, 2021 and July 25, 2021. This regulation prohibits persons and vessels from being in the regulated area unless authorized by the Captain of the Port Maryland-National Capital Region or Coast Guard Event Patrol Commander.

DATES: This rule is effective from 9 a.m. July 24, 2021, through 6 p.m. on July 25, 2021.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2021-0211 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LCDR Samuel M. Danus, Waterways Management Division, U.S. Coast Guard; telephone 410-576-2519, email Samuel.M.Danus@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
Event PATCOM	Event Patrol Commander
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

On February 22, 2021, the Kent Narrows Racing Association of Chester, MD, notified the Coast Guard that it will be conducting the Thunder on the Choptank from 9:30 a.m. to 5:30 p.m. on July 24, 2021, and those same hours on July 25, 2021. The high-speed power boat racing event consists of approximately 50 participating inboard and outboard hydroplane and runabout race boats of various classes, 16 to 21 feet in length. The vessels will be competing on a designated, marked 1-mile oval course located in the Choptank River in a cove located between Hambrooks Bar and the shoreline at Cambridge, MD. Details of the event were provided to the Coast Guard on April 19, 2021. In response, on June 7, 2021, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Special Local Regulations; Choptank River, Cambridge, MD (86 FR 30221). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this fireworks display. During the comment period that ended June 22, 2021, we received no comments.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because the regulated area is needed prior to the start of the event on July 24, 2021, in order to safeguard the public from hazards from power boat racing, including risks of injury or death resulting from near or actual contact among participant vessels, spectator vessels or waterways users if normal traffic were to interfere with the event.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under the authority in 46 U.S.C. 70041. The Captain of the Port Maryland-National Capital Region (COTP) has determined that potential hazards associated with the power boat races would be a safety concern for anyone intending to operate within certain waters of the Choptank River at Cambridge, MD. The purpose of this rulemaking is to protect event participants, spectators, and transiting vessels on certain waters of Choptank River before, during, and after the scheduled event

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published June 7, 2021. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

The COTP Maryland-National Capital Region is establishing special local regulations from 9 a.m. on July 24, 2021 until 6 p.m. on July 25, 2021. The special local regulations will be enforced from 9 a.m. to 6 p.m. on July 24th and those same hours on July 25th. The regulated area will cover all navigable waters within Choptank River and Hambrooks Bay bounded by a line connecting the following coordinates: Commencing at the shoreline at Long Wharf Park, Cambridge, MD, at position latitude 38°34'30" N, longitude 076°04'16" W; thence east to latitude 38°34'20" N, longitude 076°03'46" W; thence northeast across the Choptank River along the Senator Frederick C. Malkus, Jr. (US-50) Memorial Bridge, at mile 15.5, to latitude 38°35'30" N, longitude 076°02'52" W; thence west along the shoreline to latitude 38°35'38" N, longitude 076°03'09" W; thence north and west along the shoreline to latitude 38°36'42" N, longitude 076°04'15" W; thence southwest across the Choptank River to latitude 38°35'31" N, longitude 076°04'57" W; thence west along the Hambrooks Bay breakwall to latitude 38°35'33" N, longitude 076°05'17" W; thence south and east along the shoreline to and terminating at

the point of origin in Dorchester County, MD.

This regulation provides additional information about areas within the regulated area, and the restrictions that apply to mariners. These areas include a “Race Area,” “Buffer Area” and “Spectator Area”.

The duration of the rule and size of the regulated area are intended to ensure the safety of life on these navigable waters before, during, and after the high-speed power boat races, scheduled from 9:30 a.m. until 5:30 p.m. on July 24, 2021, and July 25, 2021. The COTP and Coast Guard Event Patrol Commander (PATCOM) will have the authority to forbid and control the movement of all vessels and persons, including event participants, in the regulated area. When hailed or signaled by an official patrol, a vessel or person in the regulated area will be required to immediately comply with the directions given by the COTP or Event PATCOM. If a person or vessel fails to follow such directions, the Coast Guard may expel them from the area, issue them a citation for failure to comply, or both.

Except for Thunder on the Choptank participants and vessels already at berth, a vessel or person will be required to get permission from the COTP or Event PATCOM before entering the regulated area while the rule is being enforced. Vessel operators could request permission to enter and transit through the regulated area by contacting the Event PATCOM on VHF-FM channel 16. Vessel traffic will be able to safely transit the regulated area once the Event PATCOM deems it safe to do so. A person or vessel not registered with the event sponsor as a participant or assigned as official patrols will be considered a spectator. Official Patrols are any vessel assigned or approved by the Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

If permission is granted by the COTP or Event PATCOM, a person or vessel will be allowed to enter the regulated area or pass directly through the regulated area as

instructed. Vessels will be required to operate at a safe speed that minimizes wake while within the regulated area. Official patrol vessels will direct spectator vessels while within the regulated area. Vessels will be prohibited from loitering within the navigable channel. Only participant vessels and official patrol vessels will be allowed to enter the race area. The regulatory text appears at the end of this document.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the location, size and duration of the regulated area, which impacts a portion of the Choptank River for a total of 18 hours. The regulated area extends across the entire width of the Choptank River between Cambridge, MD and Trappe, MD. The majority of the vessel traffic through this area consists of passenger, recreational and fishing vessels transiting along the Choptank River or into Cambridge Creek. The Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the status of the regulated area. Moreover, the rule allows vessels to seek permission to enter the regulated area.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during

rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves implementation of regulations within 33 CFR part 100 for 18 hours. It is categorically excluded from

further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Memorandum for Record supporting this determination is available in the docket. For instructions on locating the docket, see the ADDRESSES section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 46 U.S.C. 70041; 33 CFR 1.05-1.

2. Add § 100.501T05-0211 to read as follows:

§ 100.501T05-0211 Special Local Regulations, Choptank River, Cambridge, MD.

(a) *Locations.* All coordinates reference Datum NAD 1983. (1) *Regulated area.* All navigable waters within Choptank River and Hambrooks Bay bounded by a line connecting the following coordinates: Commencing at the shoreline at Long Wharf Park, Cambridge, MD, at position latitude 38°34'30" N, longitude 076°04'16" W; thence east to latitude 38°34'20" N, longitude 076°03'46" W; thence northeast across the Choptank River along the Senator Frederick C. Malkus, Jr. (US-50) Memorial Bridge, at mile 15.5, to latitude 38°35'30" N, longitude 076°02'52" W; thence west along the shoreline to

latitude 38°35'38" N, longitude 076°03'09" W; thence north and west along the shoreline to latitude 38°36'42" N, longitude 076°04'15" W; thence southwest across the Choptank River to latitude 38°35'31" N, longitude 076°04'57" W; thence west along the Hambrooks Bay breakwall to latitude 38°35'33" N, longitude 076°05'17" W; thence south and east along the shoreline to and terminating at the point of origin. The following locations are within the regulated area:

(2) *Race Area*. Located within the waters of Hambrooks Bay and Choptank River, between Hambrooks Bar and Great Marsh Point, MD. The Race Area is within the Buffer Area.

(3) *Buffer Area*. All navigable waters within Hambrooks Bay and Choptank River (with the exception of the Race Area designated by the marine event sponsor) bound to the north by the breakwall and continuing along a line drawn from the east end of breakwall located at latitude 38°35'27.6" N, longitude 076°04'50.1" W; thence southeast to latitude 38°35'17.7" N, longitude 076°04'29" W; thence south to latitude 38°35'01" N, longitude 076°04'29" W; thence west to the shoreline at latitude 38°35'01" N, longitude 076°04'41.3" W.

(4) *Spectator Area*. All navigable waters of the Choptank River, eastward and outside of Hambrooks Bay breakwall, thence bound by line that commences at latitude 38°35'28" N, longitude 076°04'50" W; thence northeast to latitude 38°35'30" N, longitude 076°04'47" W; thence southeast to latitude 38°35'23" N, longitude 076°04'29" W; thence southwest to latitude 38°35'19" N, longitude 076°04'31" W; thence northwest to and terminating at the point of origin.

(b) *Definitions*. As used in this section---

Buffer Area is a neutral area that surrounds the perimeter of the Course Area within the regulated area described by this section. The purpose of a buffer area is to minimize potential collision conflicts with marine event participants or high-speed power

boats and spectator vessels or nearby transiting vessels. This area provides separation between a Course Area and a specified Spectator Area or other vessels that are operating in the vicinity of the regulated area established by the special local regulations.

Captain of the Port (COTP) Maryland-National Capital Region means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region or any Coast Guard commissioned, warrant or petty officer who has been authorized by the COTP to act on his behalf.

Course Area is an area described by a line bound by coordinates provided in latitude and longitude that outlines the boundary of a course area within the regulated area defined by this section.

Event Patrol Commander or Event PATCOM means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated by the Commander, Coast Guard Sector Maryland-National Capital Region.

Official Patrol means any vessel assigned or approved by Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

Participant means all persons and vessels registered with the event sponsor as participating in the “Thunder on the Choptank” powerboat races, or otherwise designated by the event sponsor as having a function tied to the event.

Spectator means a person or vessel not registered with the event sponsor as participants or assigned as official patrols.

Spectator Area is an area described by a line bound by coordinates provided in latitude and longitude that outlines the boundary of a spectator area within the regulated area defined by this part.

(c) *Special Local Regulations.* (1) The COTP Maryland-National Capital Region or Event PATCOM may forbid and control the movement of all vessels and persons,

including event participants, in the regulated area. When hailed or signaled by an official patrol, a vessel or person in the regulated area shall immediately comply with the directions given by the patrol. Failure to do so may result in the Coast Guard expelling the person or vessel from the area, issuing a citation for failure to comply, or both. The COTP Maryland-National Capital Region or Event PATCOM may terminate the event, or a participant's operations at any time the COTP Maryland-National Capital Region or Event PATCOM believes it necessary to do so for the protection of life or property.

(2) Except for participants and vessels already at berth, a person or vessel within the regulated area at the start of enforcement of this section must immediately depart the regulated area.

(3) A spectator must contact the Event PATCOM to request permission to either enter or pass through the regulated area. The Event PATCOM, and official patrol vessels enforcing this regulated area, can be contacted on marine band radio VHF-FM channel 16 (156.8 MHz) and channel 22A (157.1 MHz). If permission is granted, the spectator must enter the designated Spectator Area or pass directly through the regulated area as instructed by Event PATCOM. A vessel within the regulated area must operate at safe speed that minimizes wake. A spectator vessel must not loiter within the navigable channel while within the regulated area.

(4) Only participant vessels and official patrol vessels are allowed to enter the buffer area or race area.

(5) A person or vessel that desires to transit, moor, or anchor within the regulated area must obtain authorization from the COTP Maryland-National Capital Region or Event PATCOM. A person or vessel seeking such permission can contact the COTP Maryland-National Capital Region at telephone number 410-576-2693 or on Marine Band Radio, VHF-FM channel 16 (156.8 MHz) or the Event PATCOM on Marine Band Radio, VHF-FM channel 16 (156.8 MHz).

(6) The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF-FM marine band radio announcing specific event dates and times.

(d) *Enforcement officials.* The Coast Guard may be assisted with marine event patrol and enforcement of the regulated area by other federal, state, and local agencies.

(e) *Enforcement period.* This section will be enforced from 9 a.m. to 6 p.m. on July 24, 2021 and from 9 a.m. to 6 p.m. on July 25, 2021.

Dated: July 12, 2021.

David E. O'Connell,
Captain, U.S. Coast Guard,
Captain of the Port Maryland-National Capital Region.
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